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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 375.

THE TRADESMAN'S NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA, PLAINTIFF IN ERROR,

vs.

THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 10, 1881.

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1 SUPREME COURT OF THE UNITED STATES.

THE TRADESMAN'S NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA, *vs.* THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK.	On Writ of Error to the U. S. Circuit Court, District of New Jersey.

Know all men by these presents, that we, Alexander Bradley William Vaukirk, and Oliver P. Scaife, all of the county of Allegheny and commonwealth of Pennsylvania, are held and firmly bound unto the Third National Bank of the city of New York in the sum of five hundred dollars, to be paid to the said the Third National Bank of the city of New York, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this second day of July, in the year of our Lord one thousand eight hundred and eighty-one.

2 Whereas the above-named, the Tradesman's National Bank of Pittsburgh, Pennsylvania, hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the third circuit and district of New Jersey:—

Now, therefore, the condition of this obligation is such that if above-named, the Tradesman's National Bank of Pittsburgh, Pennsylvania, shall prosecute its said writ of error to effect, and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

A. BRADLEY. [SEAL.]
V. VANKIRK. [SEAL.]
OLIVER P. SCAIFE. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. C. McCANDLESS.
WM. T. LINDSEY.

3 UNITED STATES OF AMERICA, *Western District of Pennsylvania*, } *ss:*

Before me, the undersigned, a commissioner, duly appointed by the circuit court of the United States, personally appeared Alexander Bradley, William Vaukirk, and Oliver P. Scaife, the obligors above named, who, each being duly sworn, do depose and say, and each for himself says, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

A. BRADLEY.
W. VANKIRK.
OLIVER P. SCAIFE.

Sworn and subscribed this 2d day of July, A. D. 1881, before me, at Pittsburgh, Pennsylvania.

[SEAL.]

S. C. McCANDLESS,
U. S. Commissioner W. D. of Pa.

I approve of the foregoing bond and the sufficiency of the sureties and obligors therein.

M. W. ACHESON,
U. S. District Judge, W. D. of Pa.

4 Endorsed: United States Supreme Court. The Tradesman's National Bank of Pittsburgh, Pa., *vs.* The Third National Bank of the city of New York. Bond approved July 8, 1881. Jno. T. Nixon, J.

5 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States, for the district of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a plaint which was in the said court before you, or some of you, between the Tradesman's National Bank of Pittsburgh, Pennsylvania, and the Third National Bank of the city of New York, of a plea of trespass on the case, manifest error hath intervened to the great damage of the said The Tradesman's National Bank of Pittsburgh, Pennsylvania, as by their complaint appears:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, on the second Monday of October next, in the said Supreme Court, to be then and
5½ there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eighth day of July, in the year of our Lord, one thousand eight hundred and eighty-one.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey.

[Endorsed:] 3,284. United States Supreme Court. The Tradesman's National Bank of Pittsburgh, Penn., *vs.* The Third National Bank of the city of New York. Writ of Error to U. S. circ. ct., distr. of N. J. Ret'ble Oct. term, 1881. McCarter & Keen, att'ys. I allow this writ. Jno. T. Nixon, district judge.

6 UNITED STATES OF AMERICA, *ss:*

To the Third National Bank of the city of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States, for the third circuit, and district of New Jersey, wherein The Tradesman's National Bank of Pittsburgh, Pennsylvania, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done in that behalf.

Witness the Honorable John T. Nixon, one of the judges of the circuit court of the United States, for the district of New Jersey.

JNO. T. NIXON,
District Judge.

Dated July 8th, A. D. 1881.

6½ [Endorsed:] 3,284. United States Supreme Ct. The Tradesman's Nat'l Bank of Pittsburgh, Penn., *vs.* The Third National Bank of the city of New York. On writ of error to the U. S. circ. ct., dist. of N. J. Citation. McCarter & Keen, att'ys. Ret'ble Oct. term, 1881. Due and legal service of this citation acknowledged July 14, 1881. John W. Taylor, att'y for def'ts. Returned and filed July 20, 1881. S. D. Oliphant, clerk.

7 United States Circuit Court, District of New Jersey.

THE TRADESMAN'S NATIONAL BANK OF PITTSBURGH, PENN., *vs.* THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK. } In Case. Judgment on Verdict.

McCarter & Keen, attorneys.

As yet of the ninth day of November, A. D. eighteen hundred and seventy-seven.

Witness:

W. McKENNAN, Esq.,
Cir. Judge.

S. D. OLIPHANT, *Clerk.*

DISTRICT OF NEW JERSEY, *ss:*

The Third National Bank of the city of New York, the defendants in this suit were summoned to answer, unto the Tradesman's National Bank of Pittsburgh, Pennsylvania, the plaintiffs therein in a plea of trespass on the case, and the plaintiffs aver that they are a banking association established and carrying on business in the State of Pennsylvania, under the laws of the United States, providing for national banking associations, and that the defendants

8 are a banking association established and carrying on business in the State of New York, under said laws—and thereupon the plaintiffs by McCarter & Keen, their attorneys, complain—

For that whereas heretofore, and before the grievances hereinafter mentioned, to wit, on the twenty-first day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fifteen hundred and twenty-eight dollars and twenty-one cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,528.21. PITTSBURGH, *June 21st*, 1875.

Four months after date pay to the order of J. D. Baldwin, fifteen hundred and twenty-eight and $\frac{21}{100}$ dollars. Value received,
9 and charge the same to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on
10 business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burch-

field, as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and
11 responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which, the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver, that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereon obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the twenty-third day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark
12 Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company and obtaining an acceptance thereon by said company for the plaintiffs.

By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive, in the transaction of their business relating to the procuring of an acceptance
13 of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-fifth day of June, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said com-

pany, so that the company might be held thereon. Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the
14 same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and
15 of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And whereas also, afterwards and before the grievances hereinafter mentioned, to wit, twenty-first day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs
16 were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fifteen hundred and twenty-eight dollars and twenty-one cents payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,528.21 PITTSBURGH, *June* 21, 1875.

Four months after date pay to the order of J. D. Baldwin fifteen

hundred twenty-eight and $\frac{21}{100}$ dollars, value received and charge the same to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing
17 and endorsing said draft, the said persons trading under the name and firm of Rogers & Burchfield, and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were, and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid. And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the twenty-third day of June,
18 eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants. And the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs. By means whereof and by the receipt of said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and
19 fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-fifth day of June, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs or to any other person or persons of the non-

acceptance thereof. And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the sixth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fifteen hundred and twenty-two dollars and seventy-one cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,522.71. PITTSBURGH, *July* 6, 1875.

Four months after date pay to the order of J. D. Baldwin fifteen hundred twenty-two and $\frac{71}{100}$ dollars, value received, and charge the same to account of

ROGERS & BURCHFIELD.

To W. M. CONGER,

Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm

of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company
23 were then in good credit and repute, and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers & Burchfield, and by the course of dealing between said Rogers & Burchfield and the said Tea Tray Company, during all that time the said Rogers & Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers & Burchfield, as a draft upon the company, for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; all of which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

24 And the plaintiffs further aver that, being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the eight day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton, aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said
25 company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and

and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company; or, in case the same should not be so accepted, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity, as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and de-
26 fraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the tenth day of July eighteen hundred and seventy-five, at Newark, to wit, at Trenton, aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

27 And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield, and J. D. Baldwin were and continued to be solvent, and able to pay the amount of said bill; and that afterwards and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill, as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned, if they
28 had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and where-

by, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

And whereas also, afterwards, and before the grievances hereinafter mentioned, to wit, on the sixth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the date holders and owners of a certain bill of exchange, bearing on said day, drawn by certain persons trading under the name and firm of Rogers & Burchfield for the sum of fifteen hundred and twenty-two dollars and seven one cents, payable four
29 months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,522.71. PITTSBURGH, *July 6th*, 1875.

Four months after date pay to the order of J. D. Baldwin fifteen hundred twenty-two and $\frac{71}{100}$ dollars, value received, and charge the same to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers & Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that
30 said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof they afterwards, to wit, on the eighth day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and

transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received
31 the said bill, so drawn and endorsed as aforesaid, from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs; by means whereof and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the tenth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the
32 said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance or to give any notice to the plaintiffs or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof. And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as en-
33 dorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein

mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

34 And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twelfth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on the said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of twelve hundred and ninety-seven dollars and sixty-one cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,297.61. PITTSBURGH, *July 12th*, 1875.

Four months after date pay to the order of J. D. Baldwin twelve hundred and ninety-seven and $\frac{61}{100}$ dollars, value received, and charge the same to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,

35 *Sec'y Newark Tea Tray Co., Newark, N. J.*

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company

36 were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company, during all that time, the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the com-

pany, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which
37 the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that, being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the sixteenth day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so
38 drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be accepted to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Con-
39 ger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the nineteenth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so

that the company might be held thereon. Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company or to have the same protested for non acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not
40 accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were and continued to be solvent and able to pay the amount of said bill, but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid; by means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been
41 liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And whereas, also, afterwards, and before the grievances hereinafter mentioned, to wit, on the twelfth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of twelve hundred and
42 ninety-seven dollars and sixty-one cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed; said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,297.61. PITTSBURGH, *July* 12*th*, 1875.

Four months after date pay to the order of J. D. Baldwin, twelve

hundred ninety-seven and $\frac{61}{100}$ dollars, value received, and charge the same to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh in said State; and that said bill was
43 drawn at said city of Pittsburgh, and was endorsed as aforesaid, and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the sixteenth day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants.

And the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received
44 the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance and of obtaining an acceptance thereof for the plaintiffs.

By means whereof, and by the receipt of said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-sixth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain

45 an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

46 By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorsers of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

47 And for that whereas also, afterwards, and before the grievances hereinafter mentioned, to wit, on the twentieth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of two hundred and seventy-five dollars and fifty-seven cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$275.57. PITTSBURGH, *July 20th*, 1875.

Four months after date pay to the order of J. D. Baldwin two hundred seventy-five and $\frac{57}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

48 And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs, at said city of Pittsburgh, to wit, at Trenton aforesaid, and the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company were then in good credit and repute; and
49 that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company and as their regular business paper, and that the said Walter M. Conger was then and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually, of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton, aforesaid, had notice.

50 And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the twenty-third day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and

endorsed as aforesaid as a bill on said Tea Tray Company for the purpose of presenting the same for acceptance to the said com-
51 pany and obtaining an acceptance thereof by said company for the plaintiffs; by means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrong-
52 fully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-sixth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company; and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

53 And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non acceptance and dishonor of said bill to J. D. Bald-

win, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein men-
54 tioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became, and was wholly, lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And whereas, also, afterwards, and before the grievances hereinafter mentioned, to wit, on the twentieth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of two hundred and
55 seventy five dollars and fifty-seven cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$275.57. PITTSBURGH, *July 20th*, 1875.

Four months after date pay to the order of J. D. Baldwin two hundred and seventy-five and $\frac{57}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn
56 at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same pre-

sented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the twenty-third day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received
57 the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs.

By means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises, and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-sixth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain
58 an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield, and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton, aforesaid.

59 By means whereof, and of the premises, the plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-ac-

ceptance and dishonor, and would have been able to pay the same; but who now by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

60 And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-second day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fourteen hundred and twenty-seven dollars and thirty cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,427.30. PITTSBURGH, *July 22d*, 1875.

Four months after date pay to the order of J. D. Baldwin fourteen hundred twenty-seven $\frac{30}{100}$ dollars, for of account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,

61 *Sec'ty Newark Tea Tray Co., Newark, N. J.*

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid, and that the said Tea Tray Company were then in good credit and re-

62 pute, and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and said Tea Tray Company, during

all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

63 And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the twenty-fourth day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs.

64 By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the

65 plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-sixth day of July, eighteen hun-

dred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and en-
66 dorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October in the year aforesaid, at Trenton aforesaid. By means whereof and of the premises, the plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-
acceptance and dishonor, and would have been able to pay the
67 same; but who now, by the neglect of the defendants, are discharged from the obligation to pay the same and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-second day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield for the sum of fourteen hundred and twenty-seven dollars and thirty
cents, payable four months after date, to the order of
68 J. D. Baldwin, and by him endorsed, said bill being directed

to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,427.30. PITTSBURGH, *July* 22, 1875.

Four months after date pay to the order of J. D. Baldwin, fourteen hundred twenty-seven and $\frac{30}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said
69 bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid, and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid, and the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the twenty-fourth day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants, and the defendants afterwards, to wit, on the day and year last
70 aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs, for purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs. By means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

And the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards,

to wit, on the twenty-sixth day of July, eighteen hundred and
71 seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs or to any other person or persons of the non-acceptance thereof. And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent,
72 to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

73 And for that whereas, also, afterwards, and before the grievances hereinafter mentioned, to wit, on the second day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of seventeen hundred and fourteen dollars and five cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,714.05. PITTSBURGH, *August 2d*, 1875.

Four months after date pay to the order of J. D. Baldwin seventeen

hundred fourteen and $\frac{05}{100}$ dollars for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,

74 *Sec'y Newark Tea Tray Co., Newark, N. J.*

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company, were and still are a corporation, under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and the said Tea Tray Company were then in good credit and repute, and that they then were

75 and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company and as their regular business paper; and that the said Walter M. Conger was then and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually, of all which the de-

76 fendants afterwards, to wit, on the day and year aforesaid, at Trenton, aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the fifth day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there

instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the
77 said company, and of obtaining an acceptance thereof by said company for the plaintiffs.

By means whereof and by the receipt of the said bill by the defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and
78 fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the seventh day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and
79 endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were and continued to be solvent and able to pay the amount of said bill, but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became

insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay
80 the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

And whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the second day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of seventeen hundred and fourteen dollars and five cents, payable four months after date,
81 to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,714.65. PITTSBURGH, *August 2d*, 1875.

Four months after date pay to the order of J. D. Baldwin seventeen hundred fourteen and $\frac{5}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and
82 that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid; and the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of

New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver, that being holders and owners of said bill, as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs of the non-acceptance thereof, they afterwards, to wit, on the fifth day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at *New York*, to wit,
83 at Trenton aforesaid, received the said bill so drawn and endorsed, as aforesaid, from the plaintiffs for the purpose of presenting the same for acceptance, and obtaining an acceptance thereof for the plaintiffs. By means whereof, and by the receipt of the said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted, according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof. Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the seventh day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either
84 to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance or to give any notice to the plaintiffs, or to any other person or persons, of the non-acceptance thereof. And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill, according to the tenor and effect thereof they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs as en-
85 dorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein

mentioned, if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also, the plaintiffs have lost their remedy against the said drawers and endorsers of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

86 And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the tenth day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of nine hundred and sixty-one dollars and twenty-five cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$961.25 PITTSBURGH, *August 10th*, 1875.

Four months after date pay to the order of J. D. Baldwin nine hundred sixty-one and $\frac{25}{100}$ dollars, for account rendered, value received, and charge to account of

ROGERS & BURCHFIELD.

To W. M. CONGER,

87 *Sec'y Newark Tea Tray Co., Newark, N. J.*

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray

88 Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and

Burchfield and the said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield, as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all
89 which, the defendants afterwards, to wit, on the day and year aforesaid, had notice.

And the plaintiffs further aver, that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the thirteenth day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as
90 a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company and obtaining an acceptance thereof by said company for the plaintiffs.

By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive, in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

91 Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the sixteenth day of August, eighteen hundred and seventy-five,

at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon. Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the
92 company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and
93 dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the tenth day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs
94 were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of nine hundred and sixty-one dollars and twenty-five cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray

Company, Newark, New Jersey, and being in the words and figures following, to wit:

$961.25 PITTSBURGH, *August 10th*, 1875.

Four months after date pay to the order of J. D. Baldwin nine hundred sixty-one and $\frac{25}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing
95 and endorsing said draft, the said persons trading under the name and firm of Rogers & Burchfield, and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid, and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were, and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid. And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance and due
96 notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the thirteenth day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants. And the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs. By means whereof and by the receipt of said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof to have the same protested for non-
97 acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards,

to wit, on the sixteenth day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof. And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given
98 notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also,
99 the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

To the damage of the plaintiffs fifteen thousand dollars, therefore they bring their suit, &c.

And the said defendants, by John W. Taylor, their attorney, come and defend the wrong and injury, when, &c., and say, that they are not guilty of the said supposed grievances above laid to their charge, or any, or either of them, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this they, the said defendants, put themselves upon the country, &c.

And the plaintiffs do the like.

100 Afterwards, to wit, on the 28th day of March, 1878, the parties aforesaid, by their attorneys aforesaid, waived a jury for the trial of the issues in above cause by stipulation in writing, then filed with the clerk of said court, of which the following is a copy:

United States Circuit Court, District of New Jersey.

THE TRADESMEN'S NATIONAL BANK, OF PITTSBURGH, PENNSYLVANIA,
vs.
THE THIRD NATIONAL BANK, OF THE CITY OF NEW YORK.
} In Case, Waiver of Jury.

We hereby waive a jury in the above stated cause, and agree that the issues af facts may be tried and determined by the court, without the intervention of a jury.

Dated March 28th, 1878.

McCARTER & KEEN,
Att'ys for Plaintiffs.
JOHN W. TAYLOR,
Att'y for Def'ts.

[Endorsed:] United States circuit court, district of New Jersey. The Tradesmen's National Bank of Pittsburgh, Pa. *vs.* The Third National Bank of the city of New York. Case. Waiver of jury. Stipulation waiving jury in this cause. Filed Mc'h 28, 1878. S. D. Oliphant, clerk.

101 Afterwards, that is to say on the twenty-eight day of March, in the year eighteen hundred and seventy-eight, in the term of March, eighteen hundred and seventy-eight, before the Honorable William McKennan, judge of the said circuit court, at Trenton, in said circuit, came as well the within named, the Tradesmen's National Bank, of Pittsburgh, Pennsylvania, as the within named, the Third National Bank of New York, by their respective attorneys, within named, and produce before the said judge their respective witnesses, documents, and proofs, upon the said issues, and the said court having heard the same and the argument of counsel thereon, retains the cause for advisement until the March term, eighteen hundred and eighty-one, of said court, and on the thirtieth day of April, eighteen hundred and eighty-one, the following special finding of facts was made and filed by the court, as the result of the evidence upon the trial of said issues.

102 This suit is founded upon a number of drafts fully described in the declaration. A jury was waived, and it was tried at the same time and in connection with a like suit upon other bills by the Exchange National Bank of Pittsburgh against the same defendant.

The following facts are found as the result of the evidence:

1. That the plaintiff is the holder of seven drafts for various sums, amounting altogether to $8,666.70, which were drawn by Rogers & Burchfield, at Pittsburgh, to the order of J. D. Baldwin, and by him endorsed to Walter M. Conger, sec'y Newark Tea Tray Company, Newark, N. J.

2. These drafts have different dates, from June 21, 1875, to August

10, 1875, and are in all respects similar except as to the sums payable, and in the following form:

$1,528.21. PITTSBURGH, *June* 21, 1875.

Four months after date pay to the order of J. D. Baldwin fifteen hundred twenty-eight and $\frac{21}{100}$ dollars, value received, and charge the same to account of—

ROGERS & BURCHFIELD.

To WALTER M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

103 3. They were transmitted for collection at different times before maturity, by the plaintiff to the defendant, in letters describing them by their numbers and amounts, and were sent by the defendant to its correspondent the First National Bank of Newark, enclosed in letters describing them as "Newark Tea Tray Co." except the draft of Aug. 2, 1875, which is described as "Conger, Tr."

4. By the First National Bank of Newark they were presented for acceptance, and were accepted by writing across the face, as follows: "Accepted; payable at the Newark National Banking Co., Walter M. Conger." They were discounted a few days after their respective dates.

5. They were discounted by the plff. as business paper drawn against shipments of iron, and as made by Rogers and Burchfield upon the Newark Tea Tray Co., and were transmitted to the defendant within two or three days after they were discounted, and were received by it within two or three days thereafter.

6. The First National Bank of Newark held them for payment, the plaintiff was not advised of the form of the acceptance
104 until the first draft was protested for non-payment and returned to it, at which time the drawers and endorsees were both insolvent.

7. At the time when the drats were discounted by the plaintiff the drawers were in good credit, but none of them have been paid, and they were duly protested for non payment.

8. The Newark Tea Tray Company is a corporation created by the laws of New Jersey, and doing business in that State, and Walter M. Conger was its secretary. When the drafts were presented to Walter M. Conger by the Newark Bank he declined to accept them in his official capacity.

Upon the facts thus found the court finds generally for the defendant, and directs judgment to be entered in its favor.

The reasons for this conclusion are stated in the opinion of the court in the Exchange National Bank *vs.* The Third National Bank of the city of New York, which is referred to as the finding of the law in this case also.

W. McKENNAN,
Cir. Judge.

105 And at the term aforesaid, upon the day aforesaid, it is upon the said facts specially found, as aforesaid, by the said court, considered that the said the Tradesman's National Bank of Pittsburgh, Pennsylvania, take nothing by their said writ, but that they be in mercy, &c., and that the said the Third National Bank of New York do go thereof without day, &c.

And it is further considered by the court, now here before the judge thereof, that the said the Third National Bank of New York do recover against the said the Tradesman's National Bank of Pittsburgh, Pennsylvania, fifty-six dollars and forty-five cents, for their costs and charges by them laid out about their defence in this behalf, before the judge thereof, now here adjudged to the said the Third National Bank of New York, and with their assent, according to the form of the statute in such case made and provided, and that the said defendants have execution thereof.

Judgment signed this thirtieth day of April, A. D. eighteen hundred and eighty-one.

W. McKENNAN, *Cir. J.*

106 *Opinion.*

The question upon these facts is, was the def't guilty of negligence in the discharge of its duty as the pl'ff's agent, whereby the pl'ff was subjected to loss?

What, then, was the duty of the def't? The drafts were payable at a certain future day, and were sent to the def't for collection. As was said by Selden, J., in Walker *v.* The Bank of the State of New York, 9 N. Y. Rep., 584, "that any agent whether it be a bank or an individual, receiving a note or or bill from the holder for collection, is responsible for any loss which the holder may sustain on account of any neglect in presenting it, or in giving notice of its dishonor; that it is the duty of an agent who receives for collection a bill of exchange, payable at some future time, to use due diligence in presenting the same for acceptance, and if he fail to do so, or fail to give notice in case acceptance is refused, he will be liable." Failure to present a bill for acceptance before maturity by an agent to whom it is entrusted for collection without special instructions, will not constitute want of due diligence, be-

107 cause acceptance before the day fixed for payment is not necessary to hold the drawee and endorsees, as was held in Bank of Washington *v.* Triplet, 1 Pet., 25; but if it is presented and acceptance according to its tenor is refused, if the agent fail to give notice he will be liable.

The drafts here were addressed to "Walter M. Conger, Sec'y Newark Tea Tray Co., Newark, N. J.," were duly presented to him, and were accepted in writing across their face, as follows: "Accepted, payable at the Newark National Banking Co., Walter M. Conger."

It is contended by the pl'ff that the drafts were addressed to the Newark Tea Tray Co., and that the acceptances were not by that

company, but by Walter M. Conger individually, and that by taking them in this form the def't caused the loss to the pl'ff of the drawers of the bills; and upon this hypothesis the right of the pl'ff to recover entirely depends.

It is urged with equal earnestness on the other side that in legal effect the drafts were drawn on Walter M. Conger, with the suffix of sec'y as matter of personal identification, and that
108 the acceptances were by the proper person in his proper character.

The most that can be imputed to the def't is, that it erred in judgment as to the import of the address upon the bills, and, therefore, did not cause them to be protested for non-acceptance, and notice to be given to the parties. Is this unfaithfulness or negligence in a sense which will subject the def't to liability for the loss complained of?

Whether the def't was bound to present the drafts for acceptance before their maturity or not, it certainly evinced a disposition to fulfill its agency with diligent faithfulness, by promptly presenting them for acceptance to the person named as drawee. And this it did without special instructions from its principal, and without any information which might qualify or explain the import of the drafts upon their face or repel the presumption arising from the restricted functions of the secretary of a corporation, that he was not its financial representative. Thus left to the exercise of its own judgment when it regarded Mr. Conger as addressed in his
109 individual character, it did not fall into a culpable or irrational error, because it followed the guidance of the decisions of courts of the highest standing upon the subject.

In Kean *v.* Davis, 1 Zab., 683, a case decided by the supreme court of the State in which the acceptances here were made and were payable—and therefore, of special, if not of decisive significance—it was held that a bill signed "John Kean, president Elizabethtown and Somerville R. R. Co." was to be taken as *prima facia* the individual bill of John Kean; but, inasmuch as the R. R. Co. was named in the body of the bill as payee, such an ambiguity existed as to render parole evidence admissible to explain it, and show that the bill was drawn in behalf of the company.

In Moss *v.* Livingston, 4 N. Y., Rep. 208, a bill was drawn on "John R. Livingston, Jr., president Rosendale M'ng Co., New York," and was accepted by "John R. Livingston, Jr., president Rosendale M'ng Co., 16 Wall St." and the court held that the company was not bound by it, saying: "The bill cannot be
110 deemed the obligation of the company; it does not purport to have been drawn in their behalf nor was addressed to them, or accepted in their corporate name. They were not, therefore, bound by it. In order then to give it any legal effect, we must hold it to be the private act of the parties whose names are written upon it, and binding upon them as an ordinary bill of exchange."

There are many other cases of similar tenor, which hold, that affixing an official or representative designation to the name of a promissor will not change the personal import and character of an obligation which does not indicate a different liability on its face. These cases are collected in 1 Daniel on Neg. Inst., sec. 455, &c.; and in the note to Burlingame *vs.* Brewster, 22 Amer. Rep., 177, to which no more than this general reference is needed.

Now that there are cases in conflict with these referred to is undeniable; but whether the preponderance of authority is in favor of the pl'ff or the def't, contention is indecisive of this case. Intelligent and cautious judgment upon the information with which it was supplied, and reasonable diligence, are the conditions
111 which the def't engaged to fulfill. If, then, in accordance with the decisions of the courts of the State in which the drawee of the drafts resided, and where they were to be accepted and paid, and of concurrent decisions elsewhere, it treated them as drawn on Walter M. Conger, and took his acceptances accordingly, it did not commit any breach of duty, and the pl'ff cannot recover.

Moreover, the plaintiff alone knew who was the intended drawee, as understood between it and the drawers. Of this its agent ought to have been advised, that it might have a certain guide in the performance of its duty. But the pl'ff omitted to furnish this information, and now seeks compensation for an alleged injury which the exercise of thoughtful diligence on its part would have averted. If there was any error of judgment by def't the pl'ff is by no means blameless.

There must, therefore, be a judgment for the def't upon the facts found by the court, which the clerk is hereby directed to enter.

112 UNITED STATES OF AMERICA, } *ss:*
District of New Jersey, }

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, in the third circuit, do hereby certify the foregoing to be a true transcript of the record and proceedings in said entitled cause as the same remain of record and on file in my office at Trenton, in said district.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at Trenton, in said district, this eighth day of October, A. D. eighteen hundred and eighty-one.

[SEAL.] S. D. OLIPHANT, *Clerk.*

113 *Assignment of Errors.*

United States Supreme Court of the Term of October, in the year of our Lord one thousand eight hundred and eighty one.

THE TRADESMAN'S NATIONAL BANK OF PITTSBURGH, Plaintiff in Error,

vs.

THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK, Defendant in Error.

On Error to the Circuit Court of the United States for the District of New Jersey.

Afterwards, to wit, on the tenth day of October, in the same term, before the Supreme Court of the United States, comes the said The Tradesman's National Bank of Pittsburgh, by McCarter & Keen, its attorneys, and says that in the record and proceedings aforesaid, and also in the giving the judgment aforesaid, there is manifest error in this, to wit:

First. That by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, given upon the facts specially found by the said circuit court upon the trial and determination by said court of the issues above joined, was given for the said The
114 Third National Bank of the City of New York against the said The Tradesman's National Bank of Pittsburgh, whereas the said facts specially found do not warrant the said judgment, and were insufficient to support the same, and the judgment of the said circuit court upon the said facts specially found, should have been given for the said The Tradesman's National Bank of Pittsburgh, and against the said The Third National Bank of the City of New York.

Second. And, there is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said The Third National Bank of the City of New York against the said The Tradesman's National Bank of Pittsburgh; whereas, by the law of the land, the said judgment ought to have been given for the said The Tradesman's National Bank of Pittsburgh, against the said The Third National Bank of the City of New York.

And the said The Tradesman's National Bank of Pittsburgh prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether for nothing holden, and that it may be restored to all things which it hath lost by occasion of the said judgment.

THOMAS N. McCARTER.
Att'y of Plff's in Error.

Endorsed: U. S. Supreme Court. The Tradesman's National Bank of Pittsburgh, plff. in error, *vs.* The Third National Bank of the City of New York, def't in error. On error to U. S. circ. ct., distr. of N. J. Assignment of errors. Thomas N. McCarter, att'y, plff. in error.

Endorsed on cover: New Jersey. C. C. U. S. No. 375. The Tradesman's National Bank of Pittsburgh, Pennsylvania, plaintiff in error, *vs.* The Third National Bank of the City of New York. Filed October 10, 1881.